

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY,)
)
Plaintiff,) Case No. 4:17-cv 02525-CDP
v.)
)
BOERSEN FARMS, INC.,)
)
Defendant.)

**MEMORANDUM IN SUPPORT OF PLAINTIFF MONSANTO COMPANY'S
MOTION FOR ENTRY OF DEFAULT**

Plaintiff Monsanto Company ("Plaintiff" or "Monsanto") submits the following Memorandum in support of its Motion for Entry of Default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure against Defendant Boersen Farms, Inc. ("Defendant" or "Boersen"). In support of its Motion, Monsanto states as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. Monsanto commenced this action on October 4, 2017 by filing its original Complaint, seeking damages in the principal amount of \$2,359,071.33, plus applicable contractual interest, attorney fees and costs. *See Docket No. 1.*

2. As reflected by the return of summons and the affidavit of service, Dennis Boersen was personally served on behalf of Defendant on November 16, 2017. *See Docket Nos. 6 and 6-1.*

3. Pursuant to Fed. R. Civ. P. 12, Defendant's responsive pleading to the original Complaint was due on or before December 7, 2017.

4. Defendant failed to plead or otherwise defend the original Complaint as required by the Federal Rules of Civil Procedure.

5. On December 14, 2017, the Court entered an Order for Monsanto to file an amended complaint no later than December 22, 2017 to properly allege this Court's subject-matter jurisdiction. *See* Docket No. 7.

6. Monsanto was granted leave to file its First Amended Complaint out of time, which it ultimately filed on December 28, 2017, asserting the same claims and seeking the same amount of damages. *See* Docket No. 10.

7. Dennis Boersen was served with the First Amended Complaint on the same day via U.S. mail and Federal Express pursuant to Fed. R. Civ. P. 5(b)(2).

8. Pursuant to Fed. R. Civ. P. 12, Defendant's responsive pleading was due on or before January 18, 2018.

9. As of the date of filing of Monsanto's Motion for Entry of Default, Defendant has failed to appear or file a responsive pleading to either the original Complaint or the First Amended Complaint as required by the Federal Rules of Civil Procedure.

10. Consequently, Defendant has defaulted twice in this action.

LAW AND ARGUMENT

Rule 55(a) of the Federal Rules of Civil Procedure provides, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk **must** enter the party's default." Fed. R. Civ. P. 55(a) (emphasis added). Furthermore, Rule 12 of the Federal Rules of Civil Procedure states that a defendant shall serve an answer "within 21 days after being served with the summons and complaint." Fed. R. Civ. P. 12(a)(1)(A).

Dennis Boersen was personally served with the original Complaint on November 16, 2017 and again with the First Amended Complaint on December 28, 2017. More than twenty-

one (21) days have passed since Dennis Boersen was served with both the original Complaint and the First Amended Complaint and Defendant has failed to plead or otherwise defend itself whatsoever. Therefore, pursuant to Rule 55 of the Federal Rules of Civil Procedure, the clerk should grant an Entry of Default against Defendant. A proposed Certificate of Entry of Default is attached hereto as **Exhibit A**.

CONCLUSION

An entry of default should be entered against Defendant pursuant to Rule 55(a) of the Federal Rules of Civil Procedure because Defendant was properly served with the original Complaint and First Amended Complaint and has failed to timely serve an answer or otherwise plead or defend this action.

Dated: January 19, 2018

Respectfully submitted,

HUSCH BLACKWELL LLP

By: /s/ Matthew R. Grant
Matthew R. Grant, #50312MO
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
(314) 480-1500
(314) 480-1505 (fax)

Attorneys for Plaintiff Monsanto Company

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing was filed with the Court via the Court's CM/ECF System this 19th day of January, 2018 and was served via U.S. mail upon the following:

Dennis Boersen
6241 Ransom St.
Zeeland, MI 49464

/s/ Matthew R. Grant